

**FILED**

**NOV 30 2018**

**Clerk, U.S. District Court  
District Of Montana  
Missoula**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

**JOSEPH E. LAWRENCE,**

**Petitioner,**

**vs.**

**JAMES SALMONSEN, ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,**

**Defendants.**

**CV 18-135-M-DLC-JCL**

**ORDER**

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on September 6, 2018, recommending to dismiss Petitioner Joseph E. Lawrence's ("Lawrence") petition for habeas corpus relief under 28 U.S.C. § 2254 (Doc. 1) for failure to exhaust his state court remedies. (Doc. 5.) Lawrence failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been

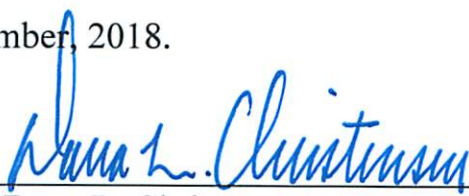
committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations (Doc. 5), the Court finds no clear error in Judge Lynch’s finding that the Montana Supreme Court has not yet heard Lawrence’s state court petition and therefore Lawrence has not properly exhausted his state court remedies. Because a federal habeas claim requires state court exhaustion under 28 U.S.C. § 2254(b) and (c), the Court adopts the recommendation to dismiss Lawrence’s petition without prejudice. *See also Baldwin v. Reese*, 541 U.S. 27, 29 (2004). Therefore, the Court adopts the Findings and Recommendations in full.

IT IS ORDERED that:

- (1) Judge Lynch’s Findings and Recommendations (Doc. 5) is ADOPTED IN FULL.
- (2) Lawrence’s Petition (Doc. 1) is DISMISSED without prejudice as unexhausted.
- (3) The Clerk of Court is directed to enter a judgment of dismissal.
- (4) A certificate of appealability is DENIED.

DATED this 30<sup>th</sup> day of November, 2018.

  
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Dana L. Christensen, Chief Judge  
United States District Court